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"FOR THE PURCHASE OF BOOKS RELATING TO THE
NORTH PACIFIC OCEAN AND ITS SHORES"



THE
CLAIMS
TO THE
OREGON TERRITORY
CONSIDERED.

BY ADAM THOM, ESQ.,

RECORDER OF RUPERT'S LAND.

~~~~~

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## PREFACE.

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ABOUT three years ago, a Memoir on the subject of the Oregon Territory, drawn up by Mr. Greenhow, Translator and Librarian to the department of State, was printed and published by order of the Senate of the United States.

In this rather elaborate work, Mr. Greenhow has, with laudable industry and no deficiency of zeal, collected information respecting the North-west coast of America, from various sources and of various degrees of value,—his object being, as he himself states, to shew the origin, nature, and extent of the several claims to the disputed territory, in order to afford the means of correctly estimating the justice of each.

Some of the most important statements in this publication are erroneous ; others admit of dispute ;



but, for argument's sake, they are assumed as correct by the writer of the following disquisition, who proposes to shew, from materials furnished by the Americans themselves, that the claim of Great Britain to the Oregon territory is superior to theirs.

It is important that this basis of the argument should be borne in mind, because if the writer has succeeded in making out his case, it will be the stronger from being founded on the admissions of an adversary. If, on the other hand, he shall be considered as having failed, the rights of Great Britain will have sustained no damage in his hands. The question is still open to discussion, and future inquirers may, by pursuing a different course, and proceeding on a more correct statement of facts, place the British claim on much higher ground than the very limited plan which he has proposed to himself permits.

# THE CLAIMS

TO

## THE OREGON TERRITORY.

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THAT vast tract of Western America, which is conventionally held in common by Great Britain and the United States, is thus bounded. Besides the natural limits of the Pacific Ocean, the Rocky Mountains, and the Arctic Sea, it is separated from Mexico by the parallel of  $42^{\circ}$ , and from Russian America by a line, which begins at the lower extremity of Prince of Wales' Island, on the parallel of  $54\frac{2}{3}^{\circ}$ , ascends the Portland Channel to the parallel of  $56^{\circ}$ , runs in the general direction of the coast, at a distance never exceeding ten leagues, as far as the meridian of  $141^{\circ}$ , and then follows the said meridian to the polar ices. But the actually disputed territory is far less extensive towards the North, for though the British have urged arguments which, if good at all, are good as far as the southern boundary, yet the Americans have never claimed, as against England, beyond the parallel of  $51^{\circ}$ , or, even as against Russia, beyond the parallel of  $54\frac{2}{3}^{\circ}$ . Taken, therefore, in its widest sense, the disputed territory lies between the Pacific ocean, the Rocky

Mountains, and the respective parallels of  $42^{\circ}$  and  $54\frac{2}{3}^{\circ}$ , being about four times as large as the British Isles.

In the following brief sketch, the North-west coast is understood to comprise all that is to the north of the Mexican Republic, as Russian America may sometimes serve the purposes of argument and illustration.

In Russian America, the prominent names are those of Port Bucareli, in about  $55^{\circ}$ ; of Mount Edgecumbe, near Sitka, in about  $57^{\circ}$ ; of Mount St. Elias, in about  $60^{\circ}$ ; of Prince William's Sound, Cook's Inlet, and the Peninsula of Aliaska, all three lying in succession to the westward; and in the disputed territory the prominent names are those of the Columbia, in about  $46^{\circ}$ ; of Bulfinch's Harbour, in about  $47^{\circ}$ ; of the Strait of Fuca, in about  $48\frac{1}{3}^{\circ}$ ; of Nootka Sound, in about  $49\frac{1}{2}^{\circ}$ .

Partly in the disputed territory, and partly in Russian America, lies the North-west Archipelago, stretching, on the outer coast, from Cape Flattery, in about  $48\frac{1}{3}^{\circ}$ , to Cape Spencer, in about  $58\frac{1}{3}^{\circ}$ ; but, on the inner coast, extending from the bottom of Puget Sound, in about  $47^{\circ}$ , to the bottom of Lynn Channel, in about  $59^{\circ}$ , and at least tripling those twelve degrees by the river-like indentations of its continental shore. It presents to the ocean its principal islands, namely, those of Vancouver, near Cape Flattery, Queen Charlotte, Prince of Wales, and King George the Third, near Cape

Spencer,—the last of the four, however, being now known to be divided into two,—while it bewilders the mainland with its countless stars of inferior magnitude ; and, to mark its political distribution as summarily as possible, its outer coast falls to Russian America and to the disputed territory in the proportion of one to two.

Towards the interior, the disputed territory may be differently distributed, according as its rivers or its mountains are taken as the fixed lines of demarcation. By two ranges of lofty heights that run nearly parallel with the longitudinal boundaries, it is distributed into three regions, diminishing as to agricultural value not less decidedly than as to its commercial importance, in the order of lower, middle, and upper ; and with reference to its streams, it may be considered to be distributed into three sections of unequal size, the Columbia valleys occupying to a fraction the whole of the upper region, the greater part of the middle, and a very small portion of the lower ; the Southern valleys, that empty their waters at once into the open ocean ; and the Northern valleys, that are screened by the great Archipelago, with the great Archipelago itself.

To the disputed territory there are, or at least have been, three civilized claimants, Spain, England, and America ; and the writer proposes to test their respective pretensions on all the possible grounds of discovery, settlement, contiguity, and

convention, drawing his materials from Greenhow's elaborate exposition of the claim of the United States,\* and assuming, for the sake of argument, the facts to be as stated in that publication, but by no means admitting that the claims of the respective parties are therein fairly set forth.

### DISCOVERY.

Discovery exclusively confers, not an actual right of property, but a contingent right of possession.

The exclusive character, however, of this contingent right, may be barred by delay or by waiver, though neither bar can be pleaded in negotiation by a competitor, who has not himself acquired some claim or other.

But there may be, with respect to one and the same country, a conflict of discoveries, each prior to the rest as to some section or other. The earliest discoverer is generally satisfied with such a glance of salient points, as in most cases leaves very much to be discovered by his followers in the same path,—the north-west coast itself perhaps furnishing the most appropriate variety of examples as to the relative merits of successive visitors. The southern half of the disputed territory must have revealed nearly all its truths to the first navigator that passed

\* *Memoir, Historical and Political, of the North-west Coast of North America, and the adjacent Territories ; illustrated by a Map and a Geographical View of those Countries.* By ROBERT GREENHOW, Translator and Librarian to the Department of State. Pp. 228, 8vo. Wiley and Putnam, New York and London.

along its shores, for it exposes the unbroken face of the solid continent to the uninterrupted surf of the open ocean, having only one island, and that hardly worthy of the name, and only two inlets, and those inaccessible at all times to large ships, and accessible to small vessels merely in such weather as renders refuge unnecessary. The northern half of the disputed territory, and the lower portion of Russian America, after having long been taken by the navigators of various nations as a part of the continent, were gradually discovered to be the insular breast-work of a matchless labyrinth of sheltered deeps ; and the upper part of Russian America, whose far-jutting headlands were naturally enough viewed by those, who first came upon them from the West, as a continuation of the Aleutian Isles, was subsequently moulded into a continent by the zeal and perseverance of Cook. In the last two cases, an exclusive claim, on the ground of the original discovery to that, which the original discoverer had not seen, and had not even imagined, would be fully as absurd as the exclusive claim which Spain set up to the whole of the western coast, on the grounds,—truly magnificent in themselves,—of having first discovered America, the Pacific, the Strait of Magellan, and the passage from the Philippines to Mexico,—of having first discovered, in short, nearly all the contiguous land, and almost every avenue of approach by water.

Under all these circumstances, discovery involves

neither a very definite nor a very powerful claim. It has been well described by Vattel, in the 208th paragraph of his first book :—

“The law of nations will, therefore, not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those of which it has really taken actual possession, in which it has formed settlements, or of which it makes actual use. In effect, when navigators have met with desert countries in which those of other nations had, in their transient visits, erected some monument to shew their having taken possession of them, they have paid as little regard to that empty ceremony, as to the regulation of the popes, who divided a great part of the world between the crowns of Castile and Portugal.”

With these preliminary observations as a guide, the writer submits the facts in chronological order.

#### DISCOVERIES.

| Date. | EXTENT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Nation. |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1543  | Ferrelo to 43°.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | S.      |
| 1579  | Drake from 48° or 43° to 38½°, coasting but not exploring. The evidence is rather in favour of the forty-eighth degree as the point of commencement. The famous voyage published in 1589, by one of Drake's companions, speaks indeed of the extreme limit as “being in 43° of the pole arctic;” but the writer, more particularly as his immediate object was to shew the intensity of the cold, most probably meant to express the polar distance,—the substitution of <i>within</i> for “in” being all that would be wanted to render the expression perfectly perspicuous. But the context supports, as well as suggests this supposition by contrasting “in 43° OF THE POLE ARCTIC” with “ <i>within</i> 38° TOWARDS THE LINE. Again, Fletcher's Journal, published in 1652, as the main text of “The World Encompassed,” distinctly gives 48°, without referring to any discrepancy between itself and “The Famous Voyage.” | E.      |

## DISCOVERIES.

| Date.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | EXTENT.                                                                                                                                                                                                                                                                                                                                              | Nation. |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1592                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Fuca, entering a strait between $47^{\circ}$ and $48^{\circ}$ , and passing many islands, reached the Atlantic.                                                                                                                                                                                                                                      | S.      |
| <p>The discovery of the north-west Archipelago induces one to suppose that this romance may have been founded on fact. In other words, Fuca may have entered a strait of nearly the specified latitude, and passed many islands, and reached the Pacific. The general correctness, however, of the old pilot courses, while it adds probability to this view of the case, is quite irreconcilable with his own belief of the fabulous side of the story, particularly as, instead of going across to Spain, he returned the way he had gone.</p> |                                                                                                                                                                                                                                                                                                                                                      |         |
| 1603                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Aguilar to $43^{\circ}$ ,—discovering near his highest limit a promontory and a river. Considering how little further Aguilar advanced than Ferrela had advanced in 1543, his details, though somewhat incongruous, do not require discussion.                                                                                                       | S       |
| 1640                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Fonté, near the parallel of $53^{\circ}$ , passed through what he called the Archipelago of San Lazaro into what he called the Rio de los Reyes, and so on through lakes and rivers till he reached the Atlantic, and there met a ship that had come from Boston, in Massachusetts, by a northerly course. But, like Fuca, Fonté retraced his steps. | S.      |
| <p>Fonté's romance, as well as Fuca's, may have been founded on fact, exhibiting, however, far more of an inventive genius. Perhaps neither of them would have been worthy of notice, had not Spain, in 1818, gravely urged both of them in support of its territorial claims.</p>                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                      |         |
| 1774                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Perez to $53^{\circ}$ , generally coasting, but never exploring. In $49\frac{1}{2}^{\circ}$ he discovered what he called the Port of San Lorenzo, probably the same as Nootka Sound; and he was, in 1789, reported by his pilot Martinez, to have entered the Strait of Fuca,—two                                                                    | S.      |



## DISCOVERIES.

| Date. | EXTENT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Nation. |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
|       | years, be it observed, after Berkeley had actually entered it.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |         |
| 1775  | Heceta discovered the opening, which was subsequently ascertained to be the mouth of the Great River of the West, and which meanwhile was sometimes known as Entrada de Heceta and sometimes as Rio de San Roque.                                                                                                                                                                                                                                                                                                               | S.      |
| 1775  | Bodeya and Maurelle to 58°, exploring as well as coasting. They were thus the first discoverers of the south-easterly portion of Russian America, and more particularly of Mount Edgecumb and Port Bucareh, respectively the best land-mark and the best harbour on the coast.                                                                                                                                                                                                                                                  | S.      |
| 1777  | Cook carefully explored to 48°, discovered, saving the then unknown claim of Perez, Nootka Sound, passed onward without seeing land to Mount Edgecumb, surveyed Russian America from Mount St. Elias to the shores of the Arctic Ocean, and ascertained that the two continents were separated by a strait, through which Beering had sailed without knowing it to be such, doing far more to determine the direction and extent of the north-west coast than all his predecessors, Spanish, English and Russian, put together. | E.      |
| 1779  | Arteaya, Bodeya, and Maurelle, having previously made the land only at Port Bucareli, followed Cook's footsteps from Mount St. Elias as far as Prince William's Sound.                                                                                                                                                                                                                                                                                                                                                          | S.      |
| 1787  | Berkeley discovered the Strait of Fuca.<br>To evade the East India Company's and South Sea Company's privileges, Berkeley carried the Austrian Flag.                                                                                                                                                                                                                                                                                                                                                                            | E.      |
| 1787  | Dixon, on strong grounds of suspicion, concluded that the coast, which lay to the north of 51°, was separated from the continent, and named it after his own ship, Queen Charlotte's Island.                                                                                                                                                                                                                                                                                                                                    | E.      |

## DISCOVERIES.

| Date. | EXTENT.                                                                                                                                                                                                                                                                                                                                                               | Nation. |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1788  | Meares, carrying Portuguese colours for purposes of evasion, penetrated into the Strait of Fuca somewhat farther than Berkeley, and, after approaching Heceta's Rio de San Roque into seven fathoms of water, was induced to deny the existence of the river in question on account of an apparently continuous barrier of breakers.                                  | E.      |
| 1788  | Martinez, sailing from San Blas, made directly for Prince William's Sound, with the view, rather political than geographical, of observing the easterly progress of the Russian posts.                                                                                                                                                                                | S.      |
| 1789  | Gray advanced into the Strait of Fuca still farther than Meares; and, having just discovered what he called Pintard's Sound in $51^{\circ}$ , he was led to conclude that the two inlets met and separated Nootka Sound territory from the continent. During the same season Gray also verified Dixon's similar surmise by circumnavigating Queen Charlotte's Island. | A.      |
| 1789  | Duncan discovered the Princess Royal group between Queen Charlotte's Island and the continent.                                                                                                                                                                                                                                                                        | E.      |
| 1790  | Fidalgo again explored from Mount St. Elias to the Peninsula of Aliaska.                                                                                                                                                                                                                                                                                              | S.      |
| 1791  | Malaspina examined the coasts north of Nootka Sound.                                                                                                                                                                                                                                                                                                                  | S.      |
| 1791  | Quimper and Elisa explored the southern reach of the Strait of Fuca.                                                                                                                                                                                                                                                                                                  | S.      |
| 1791  | Gray discovered, and partly explored, the Portland canal, taking it to be Fonté's Rio de los Reyes.                                                                                                                                                                                                                                                                   | A.      |
| 1791  | During preceding years, the Canadian traders had pretty accurately determined the general direction of the inland boundary, by exploring the McKenzie and the western feeders of the Mississippi.                                                                                                                                                                     | E.      |
| 1791  | Kendrick discovered a second outlet from Nootka Sound into the Pacific.                                                                                                                                                                                                                                                                                               | A.      |
| 1791  | Ingraham and others surveyed portions of Queen Charlotte's Island.                                                                                                                                                                                                                                                                                                    | A.      |

## DISCOVERIES.

| Date.                | EXTENT.                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Nation. |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| 1792                 | Caamans explored the north-west Archipelago from 52° to 56°.                                                                                                                                                                                                                                                                                                                                                                                                              | S.      |
| 1792                 | Vancouver surveyed the whole coast up to the Strait of Fuca, being deterred from entering Heceta's Rio de San Roque, partly by the breakers that extended across its mouth, and partly by an erroneous estimate of the size of the stream or streams within. Vancouver, however, sagaciously pronounced, that at best the river or inlet must be "a VERY INTRICATE one," and not a "SAFE NAVIGABLE opening, harbour, or place of security for shipping" of "OUR BURTHEN." | E.      |
| April<br>1792<br>May | Gray, after discovering Bulfinch's, or Gray's, or Whidbey's Harbour, entered Heceta's Rio de San Roque, having in the previous year attempted, with as little success as Meares or Vancouver, to do so for nine successive days. Gray found "the channel very narrow," and "not navigable any farther up" than about "fifteen miles," even for the <i>Columbia</i> , of 220 tons.                                                                                         | A.      |
| 1792<br>May          | Vancouver prosecuted his survey along the Strait of Fuca, falling in with a secure harbour, named by him Port Discovery, and exploring as well as discovering the southern inlets of the Strait, to the very head of Puget's Sound.                                                                                                                                                                                                                                       | E.      |
| 1792                 | June, July, and August.—Vancouver verified Gray's surmise, that Nootka Sound territory was an island, giving it the names of Quadra and Vancouver.                                                                                                                                                                                                                                                                                                                        | E.      |
| 1792                 | Galiano and Valdez first accompanied, and then followed Vancouver, in his researches of June, July, and August.                                                                                                                                                                                                                                                                                                                                                           | S.      |
| 1792<br>Oct.         | Whidbey, one of Vancouver's officers, surveyed Bulfinch's, or Gray's, or Whidbey's Harbour, ascertaining it to be "a safe retreat for small vessels."                                                                                                                                                                                                                                                                                                                     | E.      |
| 1792                 | Broughton, one of Vancouver's officers, surveyed the Columbia River, for upwards of a hundred miles                                                                                                                                                                                                                                                                                                                                                                       | E.      |

## DISCOVERIES.

| Date.   | EXTENT.                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Nation. |
|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
|         | from its mouth. Vancouver's own ship was "unable to cross the bar;" and Broughton's vessel, after almost immediately running aground, was ultimately left "about four miles from the mouth," because "the channel proved to be so intricate."                                                                                                                                                                                                                 |         |
| 1793    | Vancouver surveyed the remainder of the north-west Archipelago, above Quadra and Vancouver's Island, with great skill and untiring patience.                                                                                                                                                                                                                                                                                                                  | E.      |
| 1793    | Mackenzie crossed the hitherto untrodden Rocky Mountains, descended part of the Tacoutche Tesse, a large river, whose mouth is in $49^{\circ}$ ,—about $5^{\circ}$ farther south than the most northerly sources of the Columbia,—and then by land reached the Pacific in $52\frac{1}{3}^{\circ}$ ,—thus exploring, with undaunted courage, the breadth of the country at the very same time that Vancouver was surveying its length with luminous precision. | E.      |
| 1794    | Vancouver carefully examined Cook's Inlet, finding Cook's River to be a misnomer, and Prince William's Sound.                                                                                                                                                                                                                                                                                                                                                 | E.      |
| 1805    | Lewis and Clarke crossed the Rocky Mountains nearly on the parallel of the mouth of the Columbia, in search of any convenient "water-communication across the continent for the purposes of commerce," and, embarking on one of the tramontane streams, reached the known portion of the Columbia by means of the southern branch of that river.                                                                                                              | A.      |
| 1811    | Thompson, of the North-west Company, descended the northern branch of the Columbia to the newly-established Fort of Astoria.                                                                                                                                                                                                                                                                                                                                  | E.      |
| 1811-12 | Hunt crossed the Rocky Mountains much lower down than Lewis and Clarke, — thus traversing a larger portion of the valley of the southern branch.                                                                                                                                                                                                                                                                                                              | A.      |

To simplify the application of the foregoing facts, the inland border, the interior country, and the maritime boundary will be separately considered.

As to the inland border, its direction and position were pretty accurately ascertained by the English, while as yet hardly a single American had crossed the Mississippi, and while the Spaniards, even though Louisiana was their own, had approached only the most southerly sources of its western waters.

As to the interior country, if supposed to be divided by mountains into regions as aforesaid, Broughton first crossed the Lower, Mackenzie first crossed the Middle, and Lewis and Clarke first crossed the Upper,—Spain having done nothing, and America having at most done only half as much as England. On a liberal estimate, however, Mackenzie had anticipated Lewis and Clarke, for he was the first to cross the upper region, as well as the middle one, though perhaps not below the parallel of  $54\frac{2}{3}^{\circ}$ , the northern limit, as aforesaid, of the disputed territory.

As to the interior country, if supposed to be divided with reference to rivers into sections as aforesaid, Spain has again done nothing, England has been the first explorer of the southern valleys, and the sole explorer of the northern valleys, while England and America have divided between them the exploring of the Columbia valleys, the northern branch being a match for the southern and

Broughton's portion of the united stream being at least equal to that of Lewis and Clarke.

As to the maritime boundary, the priority of vague discovery, the extent of accurate discovery, and the value of detached discoveries will be discussed in order.

With respect to the priority of vague discovery, England probably has, through Drake, the best of it for the lower half of the disputed territory, while Spain, if not through Fuca and Fonté, at least through Perez and Bodeya and Maurelle, certainly walks the course for the upper half,—those two kingdoms having in this sense discovered the whole coast before America existed as a nation.

With respect to the extent of accurate discovery, Vancouver undeniably secured the first place for England, leaving Bodeya and Maurelle, and some others, at an immeasurable distance, to plant Spain, the second on the list, with the young Republic not very far behind.

With respect to the value of detached discoveries, Spain must leave the field to be contested between America and England. Nootka Sound, (for Perez's prior claim, besides being too long concealed from the world, cannot be established by proof,) is as superior to the Haven of the Columbia, as Port Discovery is to Bulfinch's Harbour, while the Strait of Fuca, pregnant with the widest system of inland navigation in the world, and its grand tributary, the Tacoutche Tesse, are at least equal, for

the purposes of internal communication, to the waters of which the Haven of the Columbia is the only outlet.

But if Cook's discovery of Nootka Sound was possibly anticipated by Perez's discovery of the Port of San Lorenzo, Gray's discovery of the Columbia was certainly anticipated by Heceta, according to the testimony of Greenhow himself.

Both in his "Table of Contents" and in his "Index," where theory seems to have been forgotten, Greenhow uses the following expressions:—"Heceta *discovers* the mouth of a river, named by him San Roque, now called the Columbia;" "Gray **DISCOVERS** Bulfinch's Harbour, and **ENTERS** the great river;" "Heceta *discovers* the mouth of the Columbia;" "Gray **DISCOVERS** Bulfinch's Harbour —**ENTERS** the Columbia River."

Even in his text, Greenhow chiefly constructs Gray's pedestal out of the failures of Meares and Vancouver. Now Vancouver and Meares failed to *enter* the river which Heceta had *discovered*, because they saw before them a continuous barrier of breakers; and, if they had gone farther, they would in all probability not have lived to tell the tale, for, according to Greenhow, "circumstances" even now "render the entrance and the departure of vessels *hazardous* **AT ALL TIMES**, and *almost impossible* **WHEN THE WINDS ARE HIGH.**" Gray confessedly succeeded, because, on his first visit, the outward current, which was then so high as to ride over the flood-tide, not

only gave him assurance doubly sure of a river within but also guided him to the sometimes practicable gap in the bar.

Farther, Greenhow erroneously assumes, that, but for Gray's truly creditable courage and perseverance, "the existence of the great river would doubtless have remained unknown for a longer time." Now "the existence of the great river," besides having long been an object of universal faith, might have been ascertained by interrogating on the subject the first native that might have been seen in Puget Sound or even in the Strait of Fuca. Puget Sound is not above fifty miles from the Columbia, nor above half that distance from its lowest feeder, the Coultitz; while from the Strait of Fuca, according to Washington Irving, sturgeon-fishers periodically visit the Columbia. A savage's knowledge of topography necessarily surpasses that of an illiterate member of civilised society. Thus the tribes on the Tacoutche Tesse, that lived at least three hundred miles from its mouth, assured Mackenzie, though he was prevented from believing them by his opinion as to its being the great river of the West, that it did not fall into the open ocean; and the tribes of the Rocky Mountains, that seem all to have occupied both sides of the height of land, were doubtless the source of all the vague tidings of an Oregon, that pervaded the popular mind.

Now to bring to an issue the respective pretensions of the three claimants, so far as such pretensions



rest on discovery, England is considerably superior to Spain, and infinitely superior to America, with respect to the two maritime sections, namely, the Southern Valleys and the Northern Valleys ; while with respect to the section whose vertex alone touches the ocean, namely the Columbia Valleys, America approaches more nearly to an equality with England, with but little opposition on the part of Spain.

More fully to discuss the last question, as being the only one that is susceptible of doubt, Gray's discovery, if discovery it was, of the mouth of the river could not carry the American claim up to its sources, as the Americans themselves have both positively and negatively admitted by never having demanded the whole of the Columbia Valleys, and by always having made a grand point of the travels of Lewis and Clarke ; and if one person's discovery was to give merely a local title, then would every other person's discovery do the same, so that Broughton would separate Gray from Lewis and Clarke, while Lewis and Clarke would separate Broughton from Thompson. To avoid this mutual isolation, the Lower Columbia, on which alone the inconvenience would be felt, might, on the ground, be it observed, of discovery alone, be advantageously and equitably adopted as a common boundary, while, above the fork, the height of land between the two grand branches would form the natural limit between the discoveries of Lewis and Clarke on the one side and those of Thompson on the other.

If Gray's so-called discovery had been immediately matured into actual possession, the Americans might, possibly, have claimed the whole of the Columbia valleys as against all other maritime discoverers, though not as against any overland explorer, so as to have excluded Broughton's rivalry, but to have admitted Thompson's. But so far from instantly taking actual possession, the Americans failed even to take that constructive possession, which alone, as distinguished from the discovery itself, gives to the discoverer any exclusive right.

Gray confessedly omitted the form of taking possession, while neither the general position of his country, nor its particular proceedings, could by implication supply the omission in question. Physically, the Americans had boundless wildernesses of greater value to cultivate at home, and politically they knew no mode of governing distant dependencies; and during the next ten years, Gray's success, according to Greenhow himself, was unnoticed and unknown, both popularly and officially, in the United States. Nor was the claim improved by keeping. In 1803, after the purchase of Louisiana had brought the republic into contact with the Columbia Valleys, the instructions of Lewis and Clarke regarded only "the purposes of commerce," and, even in regarding such "purposes," looked with impartial eye on "the Columbia, the Oregon, the Colorado, or any other" river,—the mention of

“the Colorado,” which was known to be Spanish, being equivalent to a disavowal of all territorial “purposes” whatever ; while Lewis and Clarke, so far as Greenhow goes, confined themselves within the range of their instructions. Subsequently, Mr. Jefferson, as quoted by Washington Irving, appeared to cherish the same views that had dictated his instructions aforesaid, by anticipating from Mr. Astor’s private enterprise, to which he promised “every facility and protection *which the government could properly afford,*” a community of “free and independent Americans, *unconnected with us but by the ties of blood and interest, &c. ;*” and in 1807, the same statesman, through the avowed motive of not giving offence to Spain, objected to a treaty, in which Great Britain seemed to impute to the United States the desire of appropriating part of the north-west coast. Do not these undeniable facts lead to the irresistible inferences, that America did not, within reasonable time, assume the benefits of Gray’s discovery, and that, if it had assumed them at first, it would have afterwards forfeited them by waiver ? To bring the question to a practical test, America could not, at least for fifteen years after 1792, have found any the least pretext in the law of nature or of nations for remonstrating with any State that might have actually appropriated to itself the Columbia Valleys in property and dominion ; nor could it, after the lapse of those fifteen years, set forth for the first time, an *inchoate* title,

which, according to its very terms, must have existed, in order to exist at all, *from the beginning*.

In strictness, therefore, America is not entitled on the score of discovery, to any portion of the disputed territory, while England, through Drake, and Broughton, and Thompson, and its explorers of the Southern Valleys, is entitled, according to the usages of the civilized world, to carry the effect of its discoveries to the main height of land, in default of conflicting discoveries. Greenhow, it is true, smiles at the antiquity of Drake's claim. In spite, however, of the delay, it is still good against those who have no claim at all ; and certainly it has never been waived, for Drake's original acquisition, besides being recorded on every map under the name of New Albion, was embraced by the charters of Carolina, Virginia, &c.

## SETTLEMENT.

Settlement is merely such a possession as potentially applies — actual application being at first impossible — a country to its natural and proper use ; and hence every attempt at settlement is entitled, as against all competitors, to such a range of territory as may be necessary for its successful working.

To take an instance from the convention of 1790 between Spain and England, that treaty declared the unoccupied wilderness of the west coast to the

north of the Spanish settlements to be open for colonization to both nations. Now, without violating the spirit of this agreement, England could not have planted a colony in the very neighbourhood of Port San Francisco, or nearer to Port San Francisco than Port San Francisco was to Monterey.

The range of territory in question may sometimes be fixed by nature herself. Thus the foundation of New Orleans amounted to a possession of the Mississippi Valleys, and the foundation of Quebec to a possession of the St. Lawrence Valleys, at least as against maritime intruders ; and the foundation of Astoria, if all the rights of discovery had centred in America, might have amounted to a possession of the Columbia Valleys, excepting against inland rivals.

Farther, according to the most obvious dictates of truth and reason, the settlement, in order to give the nation a claim, must be founded, if not by the nation, at least under the national authority. Now, though this national authority may be presumed in favour of any nation that holds the principle of indelible allegiance, for it may at any time be enforced with respect to subjects that have migrated without placing themselves under such a local law as the civilized world recognizes, yet it cannot be presumed in favour of any nation,—the United States, for instance,—that repudiates the principle in question ; and perhaps neither description of nation

can demand to be identified with a knot of foreigners, merely because such foreigners may choose to hoist the national flag,—unless, of course, the territory, as such, be clearly and undeniably national.

To add one word more, the abandonment of a settlement amounts to a forfeiture, not only of the actual possession, which may have been involved in settlement, but also of the contingent possession, which may have rested on discovery. It is, in short, the clearest and strongest of all waivers.

The bearing of those palpable truths on the following undeniable facts will hardly require to be stated.

Towards the close of the last century, the Spaniards formed two settlements, one in Nootka Sound, and another on the southern side of the Strait of Fuca, soon abandoning the former in favour of England, and as soon deserting the latter, without condition or qualification. But, even if maintained, those settlements were not entitled to a very wide range of territory, for, like the Californian colonies, they were merely the dog in the manger, destined to bark and starve. They were a fraudulent mockery of actual possession, neither applying, nor promising to apply, the coveted region to any purpose whatever.

In or about 1810, Henry established an American post at the head of the Southern branch of the Columbia, almost immediately evacuating it; in 1811, Mr. Astor's partners, who were chiefly Scotchmen,

planted four stations on the Columbia and its feeders, forsaking one and all of them before the close of 1813 on account of the war. If in later years other attempts have been made, they either have proved failures in the end or have been from the beginning mere accretions to previously existing settlements of the English. To say nothing of Henry's flying visit, Astoria and its dependencies, even if not abandoned, would have vested in the republic at best a very slender claim. They were neither founded by the nation nor under the national authority; they were commanded chiefly by Scotchmen, and manned chiefly by Canadians, so that, if they had been kept up under such management till 1821, they would have become the subject of remonstrance on the part of England, as enabling British subjects to evade the Hudson's Bay Company's exclusive licence. As the settlements in question neither stood on American territory nor were held by American citizens, they could not expect, as a matter of right, to be acknowledged as national establishments; and if the exclusive licence aforesaid had been granted, as it might have been, ten years sooner, they would most probably have been subjected to domiciliary visits for the purpose of recovering those who would have been violating their indelible allegiance, while the Americans could not have based any complaint in the premises on any principle whatever of public law. Neither the capture of Astoria nor its restitution involved any ad-

mission of nationality on the part of England, for Astoria was liable to be taken, because it shewed the American flag, and was to be restored under the treaty of peace, because it had been taken. If the capture and the restitution had any effect beyond their own essential range, they concurred in proving that very abandonment, which divests the question of nationality of all practical importance. Previously to the capture, Astoria had been given up for a price to the North-west Company, its "buildings" as well as its goods having been appraised and sold; and subsequently to the restitution, the post was never attempted to be re-established.

In 1806 and 1811 respectively, the North-west Company established trading posts on the Tacoutche Tesse and the Columbia, never receding but always advancing down to 1821. Subsequently to the year last-mentioned, the Hudson's Bay Company, after filling up the outline of its predecessor, struck the roots of its commerce even into the Great Archipelago and the Southern Valleys; and accordingly, to quote Greenhow's own words, "in the course of a few years, the whole region north and north-west of the United States, from Hudson's Bay and Canada to the Pacific, *particularly the portion traversed by the Columbia and its branches*, was occupied, in a military sense, by British forces, although there was not a single British soldier, strictly speaking, within its limits." But the country has been "occupied" not merely "in a military sense." Not only has its



every nook been vigorously and systematically appropriated, according to its natural capabilities, either to the fur-trade or to the fisheries, but also the few spots which are susceptible of cultivation, have been formed into agricultural settlements, namely, the shores of Puget Sound, and the banks of the Wallamet, the lowest feeder of the Columbia on the left. On Puget Sound the Americans have done nothing ; and though on the Wallamet they have recently become the majority, they cannot thereby have affected England's original claim of prior settlement,—even if American citizens carried with them, in presumption of law, American nationality.

On the ground of actual possession, therefore,—the strongest, by the bye, of all grounds,—England sees not even the shadow of a rival.

### CONTIGUITY.

Though, all other things being equal as between claimants, contiguity certainly ought to decide as a make-weight, yet, if stretched beyond the point, it resolves itself merely into that insane perversion of the doctrine of natural boundaries, which sacrifices the rights of the weak to the aggrandisement of the strong.

Under this head, Spain once had the strongest claim, for, even without reckoning California, the ports of San Blas and Acapulco were nearer to the north-west coast than any portion of the United

States, or any territory of Great Britain ; but this local superiority Spain virtually lost in or about 1810, namely, at the very commencement of the troubles that in 1821 gave full and perfect independence to Mexico. Nor could Spain at any time have founded much of an argument on the physical fact of its proximity. The richer provinces were sufficiently protected towards the North by wildernesses wider far than those within which the Suevi by fire entrenched themselves, while the wildernesses themselves had been repeatedly coasted for two centuries and a-quarter before they received their maritime germs of San Diego, Monterey, and San Francisco ; Spain, therefore, neither needed the North-west coast for the purposes of defence, nor was likely to use it for the purposes of settlement.

On a superficial view of this head, America may seem to have a stronger claim than England. In fact, the argument of contiguity, which is indebted for its existence to the buying of Louisiana in 1803, has been, according to Greenhow himself, the grand motive for trying to fan into life the still-born argument of discovery ; and, from the whole tenor of the proceedings, nothing appears to be more certain, than that the north-west coast, if separated from the United States by land or by water, would never have become a bone of contention between America and England. But the proximity of the republic is rather apparent than real, for between

the habitable tracts on either side of the Rocky Mountains, there intervenes an almost impassable waste of about four hundred miles in breadth. Let Greenhow speak :—“ The southern part of this region,” namely, that part of the upper region which enters into the alleged contiguity, “ is a desert, of steep rocky mountains, deep narrow valleys, called *holes* by the fur-traders, and wide plains, covered with sand or gravel ;” and “ the country east of the Rocky Mountains, for more than two hundred miles, is almost as dry and barren as that immediately on the western side.” Greenhow, moreover, furnishes the conclusion as well as the premises. “ The interposition of this wide desert tract between the productive regions of the Mississippi and those of the Columbia, must retard the settlement of the latter countries, and exercise a powerful influence over their political destinies.” Nor have the results been different from what Greenhow leads one to expect. Even as late as 1829, the overland route from St. Louis to the sources of the Platte, the most southerly of the main branches of the Missouri, occupied, according to Greenhow, three months and six days, the interval from 10th April to 16th July ; and if there be added the periods required for passing from the internal sources of emigration to St. Louis, and for traversing the whole of the breadth and the half of the length of the disputed territory, contiguity will appear to do something less for Massachusetts than Cape Horn

is ready to do for England. The Americans have themselves practically confessed this, for both the founders of Astoria and the latest settlers for the Wallamet preferred the length of two oceans to the one contiguous belt of desolation and misery.

If the Americans themselves thus choose the seas as their highway to the north-west coast, the English are as decidedly superior on the score of contiguity, as they have been shown to be on the score of possession; for, where the means of communication are equal, the country that habitually sends forth myriads of emigrants, must sooner people a distant shore, than the country that habitually receives more recruits on its maritime border than it pours into its inland valleys. So clearly is this the case, that, even if the contiguity of the Americans were not apparent but real, the English could still outrun them in the race, for New Zealand and most of the Australian colonies have at least kept pace with the average growth of an American territory, or, in other words, of such a portion of wilderness as is set apart for the purpose of ultimately ranking as an equal member of the union. But the superiority of Great Britain is still more decisive in a political sense than in a physical view. Though for many an age England can undeniably keep whatever share it may obtain of the disputed territory, yet America never can maintain any closer relation with the north-west coast than that which subsists between England and itself, or itself and

Texas,—the same relation, in fact, that was anticipated by Mr. Jefferson in the language already quoted, “unconnected with us but by the ties of blood and interest.” It would be almost impossible for the Oregonese to send representatives a journey of six or seven months to Washington, unless they should adopt the plan of despatching separate batches for alternate years; and, even if the journey were shorter in point of time, the mileage, particularly if charged by the route of Cape Horn, would render the tramontane visitors a disproportionate drag on the national exchequer. It would, moreover, be altogether impossible for the national government to exercise any control, unless by sufferance, on the farther side of a desert impassable to large bodies of men, while a naval squadron would itself be in greater danger from the want of shelter, than a surf-beaten shore would be from all its threats of invasion or blockade.

But, as between the last-mentioned two claimants, contiguity has been not merely the foundation of the general claim of America, but also the groundwork of its special demand, that the parallel of 49°, which is the common boundary to the eastward of the Rocky Mountains, be held to be so all the way to the Pacific Ocean. Now, if there were no other argument on either side, nothing could be more reasonable than that the eastern portion of the dividing line should be taken as a model for the western. Nor has England any reason to shrink

from such a criterion. The eastern portion follows, as far as possible, natural boundaries to whatever latitude such natural boundaries may lead ; for, beginning at the mouth of the St. Croix River on the parallel of  $45^{\circ}$ , it ascends, according to the literal interpretation of the treaty of 1783, to the parallel of  $48^{\circ}$  on nearly the same meridian, then descends at the head of Lake Erie to the parallel of  $42^{\circ}$ , and afterwards trends away to the northward, till, at the farther end of the Lake of the Woods, it almost cuts the parallel of  $50^{\circ}$ , thence running due south to the parallel of  $49^{\circ}$ , and thence again due west to the Rocky Mountains.

In all this immense space the parallel of  $49^{\circ}$  is the only arbitrary section of any length, though there is but little difficulty in proving that the necessity of an artificial boundary was as inevitable here as in any of the less remarkable instances. The framers of the treaty of 1783 are generally supposed to have believed the Lake of the Woods to be a tributary, not of Lake Winepeg, but of Lake Superior,—a mistake less strange, all things considered, than that made by Mr. Webster during the negotiation of the Ashburton Treaty, to the effect, that the Red River of the north flowed out of the Lake of the Woods. But whatever the authors of the compact meant or expected, the compact itself certainly carried the international border across the only available natural boundary, namely, the height of land between Hudson's Bay and the Gulf

of Mexico. When, therefore, the purchase of Louisiana brought England and America into contact as far as the mountains, the question was settled by compromise. According to the treaty of Utrecht, commissioners were appointed to draw the boundary between Hudson's Bay and the French possessions, which then comprised both Canada and Louisiana, but the appointment was followed by no result. On maps published subsequently to the date of that treaty, two lines of demarcation are laid down, the one following the parallel of  $49^{\circ}$ , and the other the height of land between the Gulf of Mexico and Hudson's Bay; from which it may be supposed that each of these lines was discussed by the commissioners. The former was, most probably, deemed at the time the more advantageous to England; for, even as late as 1783, the sources of the Mississippi were assumed to lie to the northward of the north-westernmost point of the Lake of the Woods. As to the height of land, it could not, as a whole, be adopted, inasmuch as the Lake of the Woods lay above it; while in favour of the parallel of latitude, which was now known to be more favourable to the southern than to the northern claimant, the Americans could argue, that, under the treaty of 1783, the whole continuation of the line was to run due west from the extremity aforesaid of the Lake of the Woods to the river Mississippi, then, as already mentioned, supposed to rise farther to the northward.

To conclude : since the principle of the dividing line on the one side of the mountains is the preference of natural boundaries, the extension of the same principle to the other side of the range would give nearly the same result as the most liberal view of the argument of discovery. The natural boundary would be the Lower Columbia up to the fork, and, above the fork, the height of land between the two grand branches ; and all that would be wanting to identify the two results would be the exchange of Bulfinch's Harbour for the Southern Valley.

To offer one word more. The Americans have themselves indirectly repudiated even their own extension of the eastern line, by having originally claimed the north-west coast up to the parallel of  $51^{\circ}$ , and having thereby sanctioned a deviation nearly wide enough, when taken in a different direction, to bring England down to the mouth of the Columbia,—besides being so boldly groundless as to evince a disposition to set everything like justice at defiance.

But even as far as the parallel of  $49^{\circ}$ , the actual circumstances of the case present a curious commentary on the doctrine of contiguity. Lewis and Clarke crossed the mountains nearly on the parallel of the mouth of the Columbia. Hunt chose rather to attempt a new route farther south than to tread in the tried footsteps of his predecessors ; and the later travellers have been at last driven as far down as the parallel of  $42^{\circ}$ , actually passing at one point,



according to Greenhow's map, through Mexican territory, and having afterwards to climb the lateral range of the Snowy Mountains.

Not to deprive the Americans of any available ground of claim, two of their arguments must be mentioned, which, if they do not altogether spurn the trammels of classification, fall rather under the head of contiguity.

The president of the year 1823 propounded the maxim, "that the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for colonization by any European power ;" and in a still more exclusive strain of patriotism, Greenhow makes a point of the assertion, that there is "little prospect of the diffusion of the pure Anglo-Saxon race through countries possessed by the Hudson's Bay Company."

When transplanted to the Pacific, the two principles, that have yielded so brilliant fruits on the Atlantic to the south, and the north, and the west, respectively exclude from the disputed territory all the old world in a heap, and all the new, save the United States. England, though Anglo-Saxon, has the misfortune to be European ; and Mexico, though American, is stupid enough to "call a hat a sombrero."

## CONVENTION.

Four compacts require particular consideration : the treaty of 1790 between Spain and England, the treaties of 1814 and 1818 between England and America, and the treaty of 1819 between America and Spain.

Of the treaty of 1790 the following are the applicable articles :—

“III. In order to strengthen the bonds of friendship, and to preserve in future a perfect harmony and good understanding, between the two contracting parties, it is agreed that their respective subjects shall not be disturbed or molested, either in navigating, or carrying on their fisheries, in the Pacific Ocean or in the South Seas, or on landing on the coasts of those seas in places not already occupied, for the purpose of carrying on their commerce with the natives of the country, or of making settlements there ; the whole subject, nevertheless, to the restrictions specified in the three following articles.”

“V. As well in the places which are to be restored to the British subjects, by virtue of the first article, as in all other parts of the north-western coasts of North America, or of the islands adjacent, situate to the north of the parts of the said coast already occupied by Spain, wherever the subjects of either of the two powers shall have made settlements since the month of April, 1789, or shall hereafter make any, the subjects of the other shall have free access, and shall carry on their trade without any disturbance or molestation.”

The third article was clearly intended to set aside the conflicting questions as to discovery and its attendant rights, by recognising the rule, that settle-

ment on the principle of "first come, first served," should be decisive and conclusive; and the fifth article merely provided, that any new settlements of the one power should be open to the traders of the other. In other words, the two articles, taken together, held settlement to confer a perfect right of sovereignty, saving only the commercial reservation.

But this treaty, it has been argued, was *ipso facto* annulled in 1796, by the war which then broke out between the contracting parties, and was never subsequently revived.

That the fifth article was annulled, is undeniable. With respect, however, to the third article, the case was widely different. Though its practical provisions were, of course, suspended, yet the fundamental right, which they were meant to enforce, remained undisturbed. Of such right the article in question,—Greenhow himself describing it as "a declaration of rights,"—was not introductory, but declaratory, being merely the mutual recognition of an important part of the universal law of nature and nations, as laid down by Vattel, as proclaimed aloud by every maritime people against the exclusive pretensions of the Pope's peninsular favourites, and as admitted with respect to the adjacent portion of the north-west coast, which had been appropriated, though not in any sense discovered, by Russia, by the three claimants themselves expressly, by America and England, and tacitly by Spain. But the whole

treaty was in its nature declaratory. The first article involves an admission on the part of Spain, that England had had a right to colonise Nootka Sound ; the third, with a retrospective implication, speaks as to both nations of “*their* fisheries” and “*their* commerce with the natives of the country ;” and the sixth, which treats of the unoccupied regions at the Southern extremity of the continent, deprives both nations equally of the right of forming settlements, but permits them equally to “*retain*” all other rights whatever.

But, even if annulled by the war, the articles in question were subsequently revived. The third article returned with the peace, which would necessarily, *exceptis excipiendis*, restore all questions of territory, whether actual or potential, into the *status ante bellum*. The fifth article again came into force under the treaty of 5th July, 1814, by which “all the treaties of commerce,” that subsisted “between the two nations” in 1790, were “ratified and confirmed.” Greenhow, indeed, labours to prove, that the arrangement of 1814 referred merely to the trade of Great Britain, as such, and Spain, as such, without regard to the colonies of either kingdom ; but his arguments, being avowedly based on the exclusive character of the commerce of colonies in general, and of that of Spanish America in particular, are clearly inapplicable to a provision, which expressly establishes a free trade between

either power, and certain colonial settlements of the other. But even if Greenhow's reasoning were as solid as he deemed it, he would be gaining a victory not for Spain, but for England. If the article is in force, then Spain has a right to trade at every British port of the disputed territory, with all the advantages of one-sided reciprocity ; if it be not in force, then Spain has no such right of trading, while, as has already been shown, its right of settling under the third article has been reduced within very narrow limits by the existing settlements of England.

The treaty of 1814, between Great Britain and the United States, provided "that all countries, places, and possessions whatsoever, taken by either party from the other during or after the war, should be restored without delay." Now, the remarks that have already been made under the head of Settlement with respect to the restitution of Astoria, show that Astoria had rather been abandoned than captured. But be this as it may, the treaty of peace required to be effected on the principle of *status ante bellum* ; so that the alleged reservation as to the right of sovereignty, whether made or omitted by England, and whether accepted or rejected by America, was, under any and every supposition, merely a work of supererogation. But, even admitting that the restitution necessarily implied a recognition of sovereignty, Astoria could carry with it only the Southern side of the lower

river, and the Southern branch of the upper waters.

At the very most, however, the restitution acknowledged in America merely the same privilege of colonizing unoccupied territory, which the treaty of 1790 had declared to exist as between Spain and England,—a privilege which was in itself utterly repugnant to a recognition of the dominion of a wilderness, and was in its consequences incompatible with the duties of England towards Spain. The privilege in question might, so long as it was exercised, carry with it a right of sovereignty; but, as it could not leave behind it such right, when it was itself allowed to lie dormant, the subsequent abandonment of Astoria took from America all that the treaty of 1814 could ever be supposed to have given it.

Of the treaty of 1818, the only applicable article is the third, rendered perpetual by the treaty of 1827, subject, however, to be annulled by either party after a year's notice :—

“III. It is agreed that any country that may be claimed by either party on the north west-coast of America, westward of the Stony Mountains, shall, together with its harbours, bays, and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention, to the vessels, citizens, and subjects of the two powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only

object of the high contracting parties, in that respect, being to prevent disputes and differences among themselves."

Greenhow's summary appears to be *pro tanto* correct, "that any territory in that section of America, claimed by either, should be equally free and open for navigation, trade and settlement, to the citizens and subjects of both." Though thus far the article in question is practically the same as the third article of the treaty of 1790, yet the second member of the sentence appears to involve this remarkable difference, that settlements of subsequent date are not to carry with them the rights of sovereignty, inasmuch as they are not to affect the claims of either party. This, however, does not seem to have been the view of the American Government; for, in 1827, the "President of the United States," according to Greenhow, "refused to agree to any modification of the terms of the joint occupancy,"—the proposed modification on the part of Great Britain having been, "that neither power should assume or exercise any right or sovereignty or dominion over any part of the country during that period, and that no settlement then existing, or which might in future be formed, should ever be adduced by either party in support or furtherance of such claims of sovereignty or dominion." If the republican interpretation be correct, so much the worse for the Republic, precisely in the proportion in which England has formed more settlements than America.

Of the treaty of 1819 the third article draws the boundary between the United States and Mexico and then closes with the following rider :—

“The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line ; that is to say, the United States hereby cede to His Catholic Majesty, and renounce for ever all their rights, claims and pretensions to the territories lying west and south of the above described line ; and, in like manner, His Catholic Majesty cedes to the said United States all his rights, claims and pretensions to any territories east and north of the said line ; and for himself, his heirs and successors, renounces all claim to the said territories for ever.”

Whether the treaty of 1790 was in force or not at the date of the last-mentioned compact, the rights of Spain were comparatively insignificant as against England.

Under the latter supposition, Spain had lost the argument of contiguity through the Mexican revolution, while it had forfeited the arguments of discovery and settlement partly through its own delay and waiver, and partly through the forestalling activity of its great rival.

Under the former supposition of the continued existence of the treaty of 1790, which has already been shewn to be the true one, Spain held only the right of colonizing unoccupied territory under the third article, and under the fifth article the right of trading at the English settlements,—the right of trading not being at all susceptible of transfer, and the right of colonizing amounting, if transferred, to



nothing beyond what England had indirectly acknowledged in the restitution of Astoria.

It may, moreover, be doubted, whether the one right was more susceptible of transfer than the other.

On general grounds one party to a compact, whether public or private, is incompetent to substitute another party in its place. But, even if the ordinary rule were otherwise, it could be enforced only in favour of a substitute, that might be both able and willing to discharge the correlative obligations as well as to enjoy the correlative rights; and this limitation would be inconsistent with the substitution of any power whatever in a treaty, whose every line viewed Spain in its peculiar relation to the Pacific Ocean and the coasts of the same.

Nor in all probability did the parties at the time contemplate any substitution of America for Spain as against any other nation. The provision in question, be it observed, had not an independent existence, but was merely appended to the article that professed to define the common boundary; and as the language implied that the cession and the renunciation were to be co-extensive, the former could not have force as against England any more than the latter had force in favour of that kingdom. But though the language had been different, reason would have come to the same conclusion, for Spain could not substitute America by the cession without at the same time expressly giving England the benefit of the re-

nunciation. Now, notwithstanding the treaty of 1819, England and Spain continued to occupy the same position with regard to each other ; Spain was still entitled to trade with the English settlements, and to colonise, so far as England was concerned, any unoccupied territory towards the north ; and England was still entitled, though America had ceased to be so, to colonise any unoccupied territory between the parallel of  $42^{\circ}$  and the due range of the nearest Spanish settlement.

But there is a convention more decisive in its character than any treaty between foreign competitors, the consent of the aborigines themselves.

Spain has never had, and most probably has never cared for having, any interest in the affections of the natives, while, as between England and America, Greenhow affords testimony, which is as conclusive as it is disinterested. Speaking of the natives, he says, that "the agents of the Hudson's Bay Company take care to keep" them "at enmity with" the traders of the United States ; and in another place he adds, that "the Indians are everywhere so tutored and managed by its agents, that they have become the willing slaves of the association, and are ready at any time to strike at its adversaries." Though, when it comes from such a quarter, the evidence as to the effect is unanswerable, yet as to the alleged cause, Greenhow must permit the world to take his statement at what it is worth. It is quite possible that the English may

have won the hearts of the aborigines without any attempt to disparage the Americans; and it is quite possible that the Americans may owe their hatred partly to the rumoured horrors of eastern spoliation and cruelty, and partly to tramontane displays of an unfeeling and insatiable disposition.

Moreover, the consent of the natives ought to have the greater weight, as they are confessedly less barbarous than their brethren to the eastward, being more gregarious in their habits, more sedentary in their pursuits, more skilful in defending themselves from the weather, and more economical in providing against want. In fact, this soundest and best of all conventions, if England had nothing else to plead, would be more than a counterpoise for all and every the arguments of Spain and America.

## CONCLUSION.

To sum up the claims of the Americans and the English under the different heads. Convention gives the whole of the disputed territory to England by a title paramount to all the pretensions of civilized jurisprudence, while it gives to America literally nothing, whether in the restitution of Astoria or in the treaty of 1819. Contiguity, even if admissible as a make-weight, runs the line up the Lower Columbia, and between the waters of the two grand branches. Settlement is conclusive in

favour of England through the whole length and breadth of the country, while with regard to America it results merely in the strongest of all possible waivers, uniform and universal abandonment. Discovery is decisive in favour of England as to the Southern Valleys, the Northern Valleys (excepting Bulfinch's Harbour), and as to the right bank of the Lower Columbia with the basin of the northern branch, while, even if not altogether forfeited by the delay not merely of enforcing the claim, but even of making it, it requires to be liberally construed in order to give in any sense to America what it does not exclusively give to England.

England, therefore, will forego much of her equal rights, if she consent to draw the common boundary of the Lower Columbia to the fork, and thence along the height of land that separates the two great branches of that river.

But though England (for there are limits even to the noblest magnanimity) may sacrifice her equal rights, yet she cannot consistently sacrifice her exclusive claims, any more than America is justified by a generally excusable sensitiveness in urging so unreasonable a demand.

Finally, in England the value of the disputed territory is very much underrated. The southern half, it is true, will never be worth much to the Americans, whether as a nation or as individuals; for its only two harbours are hardly good for anything; and it is doubtless a consciousness of this,

that prompts Gray's countrymen, even while boasting of his discoveries, to covet a footing in defiance of the tenth commandment, on the Strait of Fuca. But the northern half, with its countless nests of natural harbours, is destined to be the ruler of the Pacific ; and of all the colonies there is not one that is so likely to become a congenial nurseling as the screened and serrated coasts of the North-west Archipelago.

*August 7, 1843.*













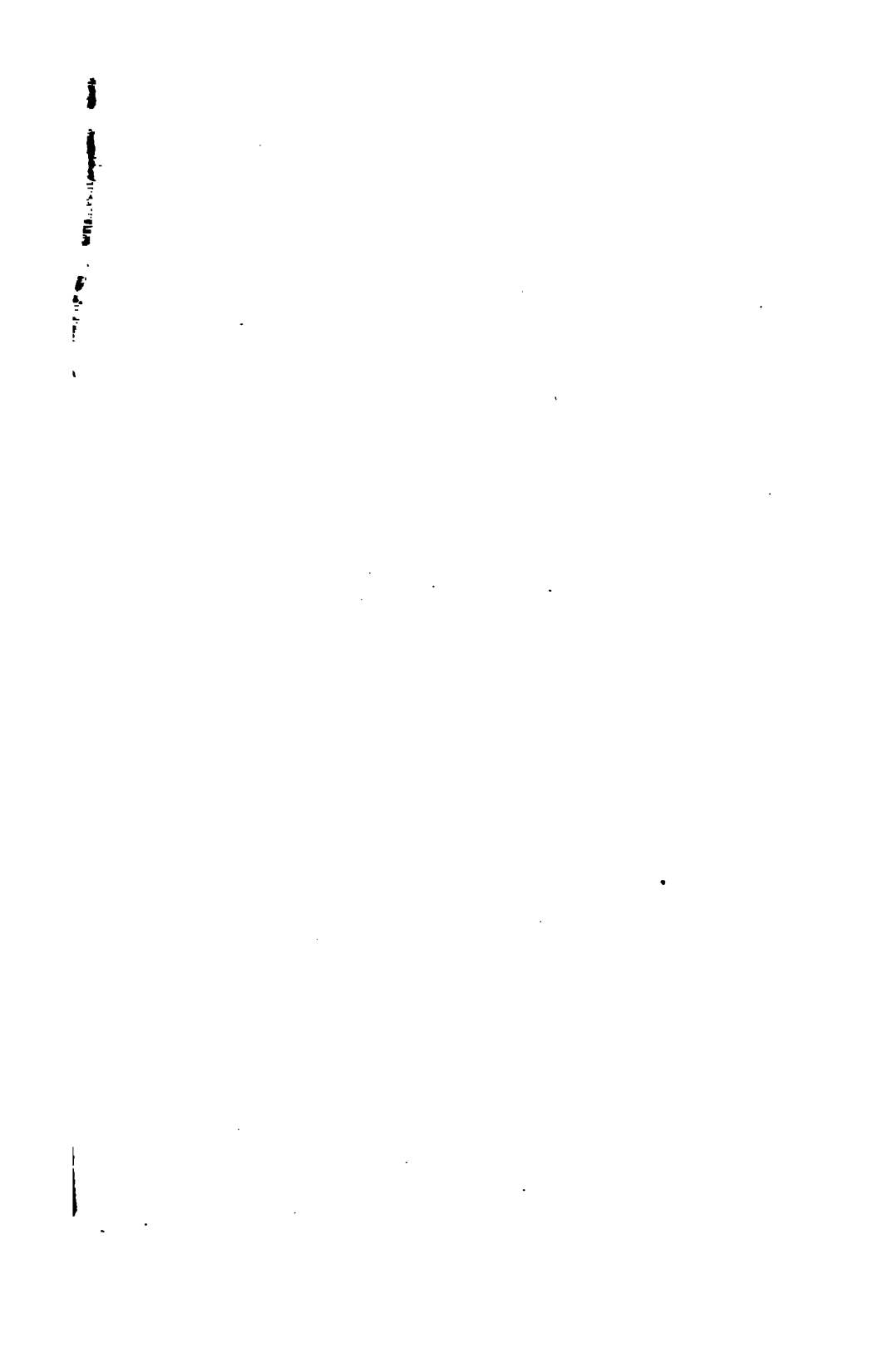
























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